IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-08-12-2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Appeal Nos. 2985, 2986, 3923 to 3927 of 2003, 118 to 122, 291 to 295, 1059 to 1064, 1065 to 1069 of 2004, W.A.SR No. 40538/2005, and Writ Petition Nos. 31148, 31378 to 31383, 31430 to 31433, 31450, 31461, 31499 to 31504, 31534 to 31539, 33592 to 33601, 33616, 33617, 33674 to 33679, 33680, 33681, 33685 to 33687, 33739 to 33745, 33840 to 33845, 33846, 33870 to 33876, 34575, 35006 to 35016, 35039 to 35045, 37840 to 37844 of 2005, and
W.A.M.P.Nos. 4717, 4718, 6419 to 6423/2003, 182 to 186, 476 to 480, 1908 to 1913, 1915 to 1919/2004, 3810/2005; and W.P.M.P.Nos. 34126, 37479, 37955 to 37965, 37994 to 38000, 40516 to 40520/2005.

M. Sekaran ... Appellant in W.A.2985/03

A. Kathiresan ... Appellant in W.A.2986/03

R. Venkatraman ... Appellant in W.A.3923/03

A. Selvam ... Appellant in W.A.3924/03

P. Saravanan ... Appellant in W.A.3925/03

G. Mayilsamy ... Appellant in W.A. 3926/03

N. Prakash ... Appellant in W.A. 3927/03

Murugesan ... Appellant in W.A. 118/04

K. Thangavel ... Appellant in W.A. 119/04

K. Thamarai Kannan ... Appellant in W.A. 120/04

Utharaj ... Appellant in W.A. 121/04

K. Venkatachalam ... Appellant in W.A. 122/04

P. Ravi ... Appellant in W.A. 291/04

Gopalsamy ... Appellant in W.A. 292/04

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Thangavel ... Appellant in W.A. 293/04

Shanmugam ... Appellant in W.A. 294/04

Jayaram ... Appellant in W.A. 295/04

Manoharan ... Appellant in W.A. 1059/04

Sriganth ... Appellant in W.A. 1060/04

S. Jothiramalingam ... Appellant in W.A. 1061/04

S. Venkatachalam ... Appellant in W.A. 1062/04

Gopalakrishnan ... Appellant in W.A. 1063/04

P. Subramaniam ... Appellant in W.A. 1064/04

S. Murugesan ... Appellant in W.A. 1065/04

R. Agrasu ... Appellant in W.A. 1066/04

Vengidusamy ... Appellant in W.A. 1067/04

M. Sivakumar ... Appellant in W.A. 1068/04

R. Palanisamy ... Appellant in W.A. 1069/04

VS

The General Manager,
Tamilnadu State Transport
Corporation,
Coimbatore Division II,
Chennimalai Road,
Erode ... Respondent in all the Writ Appeals

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W.A.SR.40538/05

Metropolitan Transport Corporation
represented by its Managing Director
Formerly known as Metropolitan
Transport Corporation Division II
Represented by its Managing Director
Ayanavaram, Chennai - 23. ... Appellant

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VS

1. Dr. Ambedkar Transport Corporation Task
Force union, represented by its
General Secretary ,
23 Jeeva Street, Kanndapalayam,
Puzhel, Chennai -66

2. The Secretary to Govt. of Tamilnadu
Transport Department,
Fort St. George, Chennai-9.

3. The Special Commissioner
Employment and Training Department
of Employment & Training
Chepauk, Chennai-5. ... Respondents

Petitioners cause title in all wps

1. N. Siva
2. N. Perumal
3. T. Jagan
4. K. Krishnamurthy
5. V. Shanmugasundaram
6. P. Chesilraj
7. K. Sivathanupillai
8. I. Deivasigamani ... Pettioners in WP 31148/05

Sekaran .. Petitioner in WP 31378/05

A. Selvam .. Petitioner in WP 31379/05

Jayaraman .. Petitioner in WP 31380/05

Srikanth .. Petitioner in WP 31381/05

S. Gopalsamy .. Petitioner in WP.31382/05

Thamarikannan .. Petitioner in WP 31383/05

P. Saravanan .. Petitioner in WP 31430/05

A. Kathiresan .. Petitioner in WP 31431/05

M. Sivakumar .. Petitioner in WP 31432/05

Jothi Ramalingam .. Petitioner in WP 31433/05

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Dr. Ambedhkar Transport Corporation
Task Force Union, Rep by its General Secretary
Reg. No. 5/97/MGR, NO. 84 G.N.T. Road
Puzhal, Chennai – 600 066 ... Petitioner in WP 31450/05

Anna Transport Corporaion
Indian National Trade Union
Congress tozhilalar Nala Sangam
Rep by its President
NO.122/B Kennedy Nagar
Suramangalam Post
Salem – 5 .. Petitioner in WP 31461/05

Mayilsamy .. Petitioner in WP 31499/05

Vengidusamy .. Petitioner in WP 31500/05

Uthiraj .. Petitioner in WP 31501/05

R. Shanmugam ...Petitioner in WP 31502/05

R. Jayabalan ...Petitioner in WP 31503/05

Venkatraman ...Petitioner in WP 31504/05

P. Subramanian .. Petitioner in WP 31534/05

Elango ... Petitioner in WP 31535/05

M. Murugesan ... Petitioner in WP 31536/05

K. Venkatachalam .. Petitioner in WP 31537/05

Mohanasundaram .. Petitioner in WP 31538/05

K. Thangavel .. Petitioner in WP 31539/05

C. Nellaraj ... Petitioner in WP 33592/05

Sasikumar .. Petitioner in WP 33593/05
Anilkumar .. Petitioner in WP 33594/05
T. Shyam Suseelan .. Petitioner in WP 33595/05
S. Alagesan .. Petitioner in WP 33596/05
S. Wilson .. Petitioner in WP 33597/05
C. Rajakumar ... Petitioner in WP 33598/05
M. Mohan ... Petitioner in WP 33599/05
C. Raj ... Petitioner in WP 33600/05
C. Rajendran ... Petitioner in WP 33601/05

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K. Kothandaraman ... Petitioner in WP 33616/05
K.V. Ramesh ... Petitioner in WP 33617/05
S. Murugesan ... Petitioner in WP 33674/05
K.P. Selvaraj ... Petitioner in WP 33675/05
P. Palaniappan ... Petitioner in WP 33676/05
S. Velusamy .. Petitioner in WP 33677/05
K. Thangavel .. Petitioner in WP 33678/05
A.M. Saravanakumar ... Petitioner in WP 33679/05
Mohanraj .. Petitioner in WP 33680/05
Venkidusubramaniam ... Petitioner in WP 33681/05
S. Ravichandran .. Petitioner in WP 33685/05
P. Subramaniam ... Petitioner in WP 33686/05
P.P. Murugan ... Petitioner in WP 33687/05
P. Velusamy ... Petitioner in WP 33739/05
G. Balamurugan ... Petitioner in WP 33740/05
R. Balusamy ... Petitioner in WP 33741/05
P. Ravichandran ... Petitioner in WP 33742/05
D. Palanisamy ... Petitioner in WP 33743/05
T. Palanisamy ... Petitioner in WP 33744/05
K.K. Bhagavathy ... Petitioner in WP 33745/05
K. Selvarajan ... Petitioner in WP 33840/05
P. Lakshmanan .. Petitioner in WP 33841/05
R.S. Subramanian ... Petitioner in WP 33842/05
K. Sivaram ... Petitioner in WP 33843/05
Periasamy ... Petitioner in WP 33844/05
Ashok Kumar ... Petitioner in WP 33845/05
C. Dhachinamoorthy ... Petitioner in WP 33846/05
Manoharan ... Petitioner in WP 33870/05
P. Ravi .. Petitioner in WP 33871/05
Gopalakrishnan .. Petitioner in WP 33872/05
R. Ayrasu ... Petitioner in WP 33873/05
K. Thangavel ... Petitioner in WP 33874/05
R. Palanisamy ... Petitioner in WP 33875/05
P. Murugesan ... Petitioner in WP 33876/05

Tamil Nadu Congress Salem
State Transport Corporation
National Workers Welfare Union
Regd. No. 958/SL.M. Rep by its
General Secretary
P. Velusamy ... Petitioner in WP 34575/05
P. Chandrasekaran ... Petitioner in WP 35006/05
R. Kandasamy ... Petitioner in WP 35007/05
K. Rathinasamy ... Petitioner in WP 35008/05
C. Sampathkumar ... Petitioner in WP 35009/05
S. Gopalsamy ... Petitioner in WP 35010/05
M. sivakumar ... Petitioner in WP 35011/05
A. Thangavelu ... Petitioner in WP 35012/05

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S. Mohankumar ... Petitioner in WP 35013/05
C. Balakrishnan ... Petitioner in WP 35014/05
N. Thangavel .. Petitioner in WP 35015/05
D. Balachandar .. Petitioner in WP 35016/05
V. Govindarajan .. Petitioner in WP 35039/05
J.Samykannu .. Petitioner in WP 35040/05
B. sudhakar .. Petitioner in WP 35041/05
V.Shanmugam ..Petitioner in WP.35042/05
K.Selvakumar ..Petitioner in WP.35043/05
S.Mohan ..Petitioner in WP.35044/05
S.Arjunan ..Petitioner in WP.35045/05
V.Sankar Ram ..Petitioner in Wp.37840/05
R.Muniraj ..Petitioner in WP.37841/05
C.Venkatachalam ..Petitioner in WP.37842/05
S.Muthukaruppan ..Petitioner in WP.37843/05
K.Sakthivel ..Petitioner in WP.37844/05

Respondents Cause Title in Wps.

1.Metropolitan Transport Corporation
(Chennai), Ltd.,
represented by its Managing Director
Pallavan Salai, Chennai-2

2. The General manager(Administration)
Metropolitan Transport Corporation
(Chennai) Ltd., Pallavan Salai,
Chennai-2. .. RR 1&2 in WP.31148/2005

The General Manager
TamilNadu State Transport Corporation
Ltd.,
Coimbatore Division, Erode Region,
Chennimalai Road, Erode .. Respondent in WP.31378/05 to 31383/05, 31430 to 31433/05, 31499 to 31504/05, 31534 to 31539/05

The Managing Director
Metropolitan Transport Corporation
Pallavan Salai, Chennai. .. Respondent in WP.31450/05

The Managing Director
TamilNadu State Transport Corporation
Salem.
.. Respondent in WP.31461/05

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1.The Secretary to Government of
TamilNadu,
Transport and Highways Department,
Fort St.George, Chennai 600 009.

2. The Managing Director
TamilNadu State Trasnport Corporatin Ltd,
Madurai Division-III, Madurai.

3. The General Manager,
TamilNadu State Transport Corporation Ltd.,
Madurai Division III, Nagercoil,
Kanyakumari District. .. RR 1 to 3 in Wps.33592 to 33601/05

TamilNadu State Transport Corporation
(Coimbatore) Ltd., Erode Region,
formerly TamilNadu State Transport
Corporation(Coimbatore Division II) Ltd.,
represented by its Managing Director,
Chennimalai Road, Erode - 2. .. Respondent in WP.33616/05, 33617/05, 33674 to 33679/05, 33680 & 33681/05, 33685 to 33687/05, 33739 to 33745/05, 33840 to 33845/05, 33846/05.

The General Manager,
TamilNadu State Transport
Corporation Ltd.,
Coimbatore Division,
Erode Region,
Chennimalai Road, Erode. Respondent in WP.33870 to 33876/05

The Managing Director
TamilNadu State Transport
Corporation(salem Division-I)
ltd., Salem-636 007. Respondent in WP.34575/05

TamilNadu State Trasnport
corporation Ltd., Coimbatore
represented by its Managing
Director,
37, Mettupalayam Road,
Coimbatore. Respondent in WP.35006 to 35016/05, 35039 to 35045/05

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TamilNadu State Trasnport
Corporation Ltd.,
represented by its managing
Director,
Chennimalai Road, Erode. Respondent in WP.37840
to 37844/05.

Writ Appeals under clause 15 of the letters patent against the order of the Honourable Mr.Justice K.P.Sivasubramaniam, dated 13.5.2003 and made in the exercise of that Special Original Jurisdiction of this High court in WP.No.12279/03, 13269, 13272, 12326, 13270, 12317, 12278, 13274, 12847, 12280, 12848, 12318, 12867, 12897, 12316, 12327, 12276, 12866, 12275, 13276, 13271, 12849, 12319, 12530, 12328, 12324, 12896 and 12277 of 2003 respectively. Presented to this Court under Article 226 of the Constitution of India, to issue writs of Certiorarified Mandamus, calling for the records from the respondent relating to the order in Ref Nos.1123/P4/Pa.Pil/CBE,
1122/P4/Pa.Pil/CBE, 1122/P4/Pa.Pil/CBE,1123/P4/Pa.Pil/CBE,
1123/P4/Pa.Pil/CBE, 1123/P4/Pa.Pil/CBE,1123/P4/Pa.Pil/CBE
1124/P4/Pa.Pil/CBE, 1122/P4/Pa.Pil/CBE,1122/P4/Pa.Pil/CBE,
1122/P4/Pa.Pil/CBE, 1122/P4/Pa.Pil/CBE,1123/P4/Pa.Pil/CBE,
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1123/P4/Pa.Pil/CBE, 1123/P4/Pa.Pil/CBE,and 1123/P4/Pa.Pil/CBE
respectively Divn 2/2003, dated 3.4.2003 quash the same and consequently direct the respondent to give the petitioner permanency an completion of 240 days of service from the dae of initial appointment in accordance with 12(3) settlement with the consequential benefits.

WA.SR.No.40538/2005:- Writ Appeal sought to be preferred under clause 15 of the Letters patent against the order of the Honourable Mr.Justice P.K.Mishra, dated 25.2.2005 and made in the exercise of the special Original Jurisdiction of this court in WP.No.3352/98 presented to this Court under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records and quash letter No.Tho.Pa.1/53564/97 dated 30.9.97 of the 3rd respondent and consequently direct the 3rd Respondent to register the experience certificate of the workers whose names are in the annexure spar for their name, to the 2nd Respondent corporation and consequently direct the 2nd Respondent to appoint the workers whose names are in the annexure.

1. writ petitions filed under Ariticle 226 of the constitution of India to issue a writ of Mandamus directing the respondents to reemploy the petitioners as diver as per section 25H of the I.D.Act before appointing any new person as a driver either by direct recriutment or otherwise, award Costs(WP.31148/05,WP.31378 to 31383/05,31430 to 31433/05,31499 to 31504/05 31534 to 31539/05.

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2. directing the respondent to implement the order in WP.3352 of 1998 dated 25.2.2005 by appointing the workers whose names are in the annexure as driver and conductors in the Respondent Corporation as a preferential bassis as per section 25H of the Industrial Disputes Act 1947(WP.31450/05)

3. directing the respondent to implement the order in WA.No.1017 and 1019 of 1997 dated 8.12.1997 by appointing the workers whose names are in the typed set as drivers and conductors in the Respondent Corporation as a preferential bassis as per section 25H of the Industrial Disputes Act 1947 (WP.31461/05)

4. directing the respondents to reemploy the petitioner as a driver as per Section 25H I.D. Act before appointing any new person as a driver either by new recruitment or otherwise costs(WPs.33592 to 33601/05)

5. directing the respondents to reemploy the petitioner as a conductor in the existing vacancies as per the order dated 11.2.2000 of this Hon'ble Court in WP.1869/99 and the order of the respondent dated 17-4-2000 before appointing any new person as conductor either by direct recruitment or otherwise, award costs(WP.33616/05)

6. as per order dated 23-2-99 of this court in WP19900/98 at the order of the respondent dated 19.8.99 respondents(WP.33617/05)

7. directing the respondent to the petitioner reemploy as conductor in the existing vacancies as per the order dated 15.3.99 of this Hon'ble Court in WP.3252/99 3253/99 and the order of the respondent dated 26.8.99 before appointing any new person as conductor either by direct recruitment or otherwise award costs.(WP.33674/05 to 33678/05)

8. directing the respondent to the petitioner reemploy as conductor in the existing vacancies as per sections 25-H of Industrial Disputes act and the assurance given by the respondent before appointing any new person as conductor either by direct recuritment of otherwise, Award Costs (WP.33679/05)

9. as per order dated 18.12.98 of this Hon'ble court in WP.18164/98 and the order of the respondent dated 20.5.99 before appointing any new person as conductor either by direct recruitment or otherwise, award costs. (WP.33680/05 & 33681/05)

10. as per order dated 4.9.98 of this Hon'ble court in WP.12508/98 & WP.12509/98 & WP 12507/98 and the order of the respondent dated 10.2.99 before appointing any new person as conductor either by direct recruitment or otherwise award costs.(WP.33685 to 33687/05)

11. directing the respondent to the petitioner re-employ as conductor in the existing vacancies as per the order dated 15.3.99 of this Hon'ble

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court in WP.19185/98,17354/98,17351/98,17357/98, 17360/98, 17359/98, 17783/98 and the Order of the respondent dated 20.8.99 & 26.8.99 before appointing any new person as conductor either by direct recruitment or otherwise award costs.(WP.33739 to 33745/05)

12. directing the respondent to the petitioner re-employ as conductor in the existing vacancies as per the order dated 21.12.01,17.6.99,21.12.01 and 7.7.2000 Hon'ble court in WP.25261/01,25262/01,10190/99,10192/99 25233/01 and 11340/2000 respectively and the order dated 8.12.97 in W.A 1294 to 1299/97 etc before appointing any new person as conductor either by direct recruitment or otherwise award costs.(WPs.33840 to 33845/05)

13. directing the respondent to re-employ the petitioner as conductor in the existing vacancies as per the order dated 15.3.99 of this Hon'ble Court in Wp.No.3253/98 and the order of the respondent dated 26.8.99 before appointing any new person as conductor either by direct recruitment or otherwise award costs.(in WP.33846/05)

14. directing the respondents to re-employ the petitioner as a driver as per Section 25H of the ID Act before appointing any new person as driver either by direct recruitment or otherwise Award costs in (WPs.33870 to 33876/05)

15. directing the respondent to appoint the members of the petitioner union annexed herein as Driver/conductor as per the orders issued in WA 1017 and 1019 of 1997 dated 8.12.97 and as per section 25 H of I.D.Act 1947 before making any fresh recruitment from the open Mariet. (WP.34575/05)

16. directing the respondents to re-employ the petitioner as a driver in the existing vacancies as per the order dated 6.3.2003 of this Hon'ble court in WP.16579/2000, 16538/2000, 16574/2000, 16568/2000, 16573/2000, 16535/2000 & 16566/2000, 16542/2000 and the order of the respondent dated 5.12.2003 before appointing any new person as driver either by direct recruitment or otherwise award costs.[(WP.35006,35009/2005) (WP.35010,35011/05) (wp.35012,35013, 35014,35015/05) AND (wp 35016/05)

17. directing the respondent to re-employ the petitioner as conductor in the existing vacancies as per section 25 H of ID Act before appointing any new person as Conductor either by direct recruitment or otherwise award costs. (WP.35007 & 35008/05)

18. directing the respondent to re-employ the petitioner as conductor in the existing vacancies as per the order of the respondent dated 17.5.2004 before appointing any new person as conductor either by direct recruitment or otherwise award costs.(WP.35039/05)

19. directing the respondent to re-employ the petitioner as conductor in the existing vacancies as per the order dated 7.11.2001 of this Hon'ble

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Court in WP.21290/2001 before appointing any new person as conductor either by direct recruitment or otherwise award costs.(WP.35040/05).

20. as per the order dated 18.10.2001 of this Honourable Court in WP.19748/2001 before appointing any new person as conductor either by direct recruitment or otherwise Award costs (WP.35041/2005)

21. as per the order dated 18.10.2001 of this Honourable Court in WP.19876/2001 before appointing any new person as driver either by direct recruitment or otherwise Award costs (WP.35042/2005)

22.as per the order of the respondent dated 17.5.2004 before appointing any new person as conductor either by direct recruitment or otherwise Award costs (WP.35043/2005)

23. as per the order dated 19.11.2001 of this Honourable Court in WP.22226/2001 and the order of the respondent dated 8.4.2004 before appointing any new person as conductor either by direct recruitment or otherwise Award costs (WP.35044/2005)

24. as per the order dated 10.12.2001 of this Honourable Court in WP.23708/2001 before appointing any new person as conductor either by direct recruitment or otherwise Award costs (WP.35045/2005)

25.as per the section 25.H of the I.D. Act before appointing any new person as driver and conductor either by direct recruitment or otherwise Award costs (WPs.37840/05 to 37844/05 respectively)

Mr. D. Hariparanthaman:- For Appellant in all the Writ Appeals and for Petitioner in W.P.Nos.31378 to 31383, 31499 to 31504, 31534 to 31539, 31430 to 31433, 33616, 33617, 33674 to 33679, 33680, 33681, 33685 to 33687, 33739 to 33745,33840 to 33845,33846, 33870 to 33876, 35006 to 35016, 35039 to 35045,31148, 37840 to 37844/2005.

Mr. R. Ganesan:- For petitioner in W.P.Nos. 33592 to 33601/2005.

Mr. N.G.R. Prasad for M/s.Sudha Ramalingam, D. Nagasaila:- For petitioner in W.P.Nos.31450,31461/2005 and for Respondent in W.A.M.P.No. 3810/2005.

Mr. C. Selvaraju, Senior Counsel for Mr. S. Mani: For Petitioner in W.P.No. 34575/2005.

Mr. N.R. Chandran, Senior Counsel, assisted by Mr. L.G. Sahadevan:- For Respondents in all Writ Appeals and Writ Petitions.

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COMMON JUDGEMENT

(Judgment of the Court was delivered by P.Sathasivam,J.,)

Since the issue raised in the Writ Appeals and the Writ Petitions relates to employment/re-employment of persons retrenched in the Transport Corporations, these matters are being disposed of by the following common judgement.

Writ Appeals:-

2. The Writ Appeals are filed by the appellants against Order of K.P. Sivasubramaniam, J., in Writ Petition Nos. 11785 of 2003 etc., batch dated 13-05-2003.

3. According to the appellants, the respondent-Transport Corporation recruited about 75 Drivers through Employment Exchange during March, 2001. Those drivers underwent the selection process and got selected. On selection, they were sent for training at Chithode Training School. On completion of training, they were issued orders dated 18-04-2001 appointing them on consolidated wages for two years describing them as 'trainee drivers' and posting them in various depots. They discharged the duties of regular drivers as they were sent on line duty and they were relievers to regular drivers.

4. It is their further case that as per Section 12 (3) settlement which came into force from 1-9-92, the drivers recruited through employment exchange should be made as 'daily rated workmen' and not on as consolidated pay. As per the settlement, on completion of 240 duties by these daily rated drivers, they should be made permanent and should be brought to scale of pay. The Transport Corporation paid Rs.2,500/- as consolidated pay per month while monthly salary would be Rs.4,160/- if it was paid based on daily rated wage of Rs.160/- per day. By putting them on consolidated pay, permanency would not be conferred.

5. The Transport Corporation issued orders during February/March, 2002 making all the 75 drivers as daily rated workmen. In the same order, it is specifically stated that on being made daily rated workmen, they were directed to pay Rs.4550/- towards the shares of Medical and Engineering colleges run by I.R.T. As directed, they paid the required amount. As per the settlement, the drivers should have been appointed on daily rated workmen from 18-4-2001 itself, instead of appointing them initially as trainee drivers on consolidated salary. However, they were brought on daily rated workmen during February/March, 2002. On completion of 240 duties, the drivers were issued orders dated 30-01-2003/29-3-2003 making them permanent and bringing them to scale of pay. However, the Transport Corporation cancelled the said orders dated

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30-01-2003/29-3-2003 and also the orders making them daily rated in February/March, 2002 by issuing orders dated 3-4-2003 to all the 75 drivers. Based on the said order dated 3-4-2003, on completion of 2 years service, the drivers were sought to be relieved. The said order dated 3-4-2003 was challenged by the 75 drivers by individually filing writ petitions. The prayer in the writ petition was to quash the order dated 3-4-2003 of the General Manager, Tamil Nadu State Transport Corporation, Coimbatore Division-II, Erode and for a direction to make them permanent on completion of 240 days from the date of initial appointment as per the 12 (3) settlement. Those, who were not relieved, had the benefit of interim order and continued in service and those, who were relieved did not have the benefit of interim order. It is the grievance of the appellants that the seniors who had completed their tenure of 2 years earlier, did not have the benefit of interim order. All the writ petitions were finally disposed of on 13-5-2003 by a common order. The learned Single Judge passed the following order:

> "14. However, in view of the stand taken by the Corporation as mentioned above and bearing in mind the right of the workers to seek compliance of the terms of settlement under Section 12 (3) of the Industrial Disputes Act, I am inclined to pass the following order:-
>
> i) The services of the petitioners shall not be terminated, other than the 31 employees who have already been relieved.
>
> ii) They will be retained in service on the same terms and conditions and salary as they were entitled to before the order of confirmation were issued on 30-1-2003.
>
> iii) Their services will not be terminated merely on the basis that their appointments are temporary and that their period of training has been completed. They will continue to be employed in the same capacity and in the same terms as before 30-1-2003 till they are regularised in service as and when vacancies in the permanent cadre arise or the permanent cadre strength is increased. It is not disputed that their services are being utilised and are required as on date.
>
> iv) It is open to the Corporation to take action against any individual employee for any misconduct either in the context of the allegation of fraud or collusion as stated above or any misconduct which may arise in future and this order will not stand in the way of such action.
>
> 15. As regards the rights of the employees arising out of the alleged agreement under Section 12 (3) of the Industrial Disputes Act or their claims under the Tamil Nadu Conferment of Permanency Act, 1981, the petitioners are free to

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approach the appropriate authority/Labour Court as the case may be, for any relief to which they are entitled to, inclusive of the 31 employees who have already been relieved.

16. The writ petitions are disposed of subject to the above observations..."

6. The grievance of Mr. D. Hariparanthaman, learned counsel appearing for the writ appellants, is that the learned Judge having arrived at a categorical conclusion that the persons concerned were relieved without a minimum opportunity of show-cause notice, granted relief in favour of the persons who have not been relieved, and rejected the same relief in respect of the 31 candidates who had already been relieved on 18-4-2003 and 19-4-2003. It is his further grievance that the learned Judge, while granting limited relief by holding that the drivers would be retained in service on the same terms and conditions and salary as they were entitled to before 30-01-2003, ought to have granted the same in favour of all the 75 selected candidates. In other words, the restricted prayer of the appellants as seen during the argument of the learned counsel for the appellants is that the limited relief given in the writ petitions has also to be given/extended to the appellants as well because they are similarly situated with others who were granted limited relief. The only reason for denying the limited relief is that the appellants did not have the benefits of interim order. Mr. D. Hariparanthaman also contended that the relief given at the time of final disposal cannot be based on the interim order since the writ petitions were finally disposed of. It is also pointed out that for granting interim order, whether the drivers were relieved or not can be a relevant one, but by granting final relief, that cannot be a relevant criteria. On the other hand, Mr. N.R. Chandran, learned Senior Counsel appearing for the Transport Corporation, would contend that these appellants were trainees and trainees have no right to employment. As rightly pointed out by Mr. D. Hariparanthaman, such argument cannot stand since even according to the learned Judge that the drivers would continue in the capacity as before 30-01-2003 and they became daily rated workmen after February/March, 2002 and therefore, they were daily rated workmen before 30-01-2003 and thus they were not trainees. Further, the Corporation did not challenge the common Order of the learned Judge dated 13-05-2003 and the said finding/decision became final.

7. Now let us analyse the order of the learned Single Judge. Before the learned Judge, it was the contention of the writ petitioners that they had been appointed by following proper method of recruitment by calling for names from the employment exchange. It is also their claim that they have not entered into service by any back door method. Therefore, according to them, on completion of prescribed period of training, their services were bound to be made permanent and also in terms of the settlement under Section 12 (3) of the Industrial Disputes Act. It was further contended before the learned Judge that having issued orders

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of regularisation, the same could not have been cancelled without notice to the aggrieved persons. On the other hand, it was the contention of the Transport Corporation before the learned Judge that the order confirming the services of the writ petitioners have been issued even before the completion of 2 year period for confirmation and without any regard to the vacancy position. It was their further contention that the vigilance enquiry revealed large scale fraud on the Corporation and prima facie materials are available disclosing that the order of confirmation had been issued by collusion between the parties and some of the officers of the Corporation. It was also contended that even before the order of status-quo was passed by the learned Single Judge, 31 of the petitioners had been relieved and, therefore, they could not claim to continue in service. With reference to the above contentions, the learned Judge at the foremost accepted the claim of all the petitions that they cannot be relieved even without minimum opportunity namely, show cause notice. In para 11, the learned Judge has observed that "In the course of arguments, I had pointed out to the learned counsel representing the respondents that whatever be the reason for passing the impugned order, the minimum requirement of show cause notice should have been complied with...." Again in para 13, the learned Judge has observed that "...But the minimum requirement before the impugned order could have been issued against the petitioners is to have called upon the employee to show cause against the withdrawal of the earlier order confirming the services of the petitioners. The said minimum requirement cannot be dispensed with. It is also true that the period of confirmation had been fixed as two years by order dated 18-4-2001. In terms of said order, confirmation order could have been issued on or after 18-4-2004. But orders of confirmation had been issued on 30-1-2003 itself. But that circumstance alone will not amount to proof of fraud or collusion against each employee. It is certainly open to any employer to confirm the services even earlier, provided that such orders are not issued for any extraneous consideration and without any discrimination. Therefore, the need to issue a show cause notice cannot be dispensed with". In the light of the categorical conclusion that show-cause notice is a must to all before relieving them, we are of the view that the learned Judge ought to have allowed all the writ petitions on the ground of violation of principles of natural justice. As rightly pointed out, merely because some of them had been relieved and they could not secure orders of status-quo at the time of entertaining the writ petitions, on that ground they cannot be allowed to deprive of the main relief particularly, when a finding was given that they were not provided with show-cause notice before the impugned order was passed, relieving them from the post. It is not in dispute that all the petitioners/writ appellants had been appointed by following proper procedure and method of recruitment by calling for list, which contained their names, from the employment exchange concerned. It is also not in dispute that after selection, all of them were sent for training. Therefore, on completion of prescribed period of training, their services have to be made permanent subject to availability of vacancy and also in terms of settlement under Section 12 (3) of the Industrial Disputes Act. It is also relevant to

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note that orders of regularisation having been issued, as pointed out, the same could not have been cancelled without notice to the aggrieved persons. It is also not in dispute that the status of those persons as daily rated workmen is in consonance with the 12 (3) settlement which has also been relied on by the learned judge.

8. Now let us consider the other argument that inasmuch as the appellants were directed to pursue their remedy in Labour Court/Industrial Tribunal, whether they are entitled to get the relief as prayed for.

9. In the typed-set of papers filed before the learned Single Judge, the appellants/petitioners therein enclosed copy of the order of appointment dated 18-4-2001 wherein they along with other workmen were appointed as trainee drivers on consolidated wages. They also enclosed subsequent order dated 25-2-2001 wherein they were appointed as driver on daily rated basis. In the former appointment order i.e., order dated 18-04-2001, it was stated by the Tamil Nadu Transport Corporation, Coimbatore Division, Erode-I, that in continuation of the various orders referred to in the references stated therein, the workmen who have completed training in the drivers' training school were appointed as trainee drivers for two years from 19-04-2001 in the branch noted against them. The order further shows that they will be paid a consolidated wage of Rs.2,500/- for the first year and Rs.3,000/- for the second year. After cataloguing their names, employment registration number, branch training number and the names of the branch to which they were appointed, the order further says that the workmen who completed satisfactorily first year alone will be eligible to get the wages for the second year based on the orders of the headquarters and that thereafter based on the vacancy position and assessing the services of the workmen, temporary driver staff No.(T.No.) will be given. Subject to those conditions, they were directed to report duty on 19-04-2001 before the concerned Branch Manager/Assistant Branch Manager. In the latter order i.e., order dated 25-02-2002 wherein they were appointed on daily wage basis, the following conditions are found to be incorporated:

> "1. In continuation of the orders mentioned in the reference, you are appointed a temporary workman on daily wage basis at the rate of Rs.160/- per day as your service was satisfactory during your service as trainee driver.
>
> 2. You are directed to report duty before the Selection Grade Assistant Manager (Personnel) of Tamil Nadu State Transport Corporation (CBE.Div.2) Ltd., Erode-1 on or before 1-4-2002.
>
> 3. At the time of reporting duty, you should bring a crossed demand draft for Rs.4550 drawn in favour of Tamil Nadu State Transport Corporation (CBE Div-II) Ltd., Erode-1 towards the share for Medical College/Engineering College/Polytechnic run by IRT.
>
> 4. You are bound by the rules and regulations of the

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Corporations.

5. You will be subjected to transfer within the corporation according to administrative exigencies.

6. This order will not guarantee permanent appointment.

7. You may be removed from service during this temporary service without any notice and without assigning any reason.

8. You should produce fitness certificate and fitness of eye sight certificate from the Government Civil Surgeon.

9. You should produce attested copies of all the certificates relating to educational qualification. Driver Licence, First Aid certificate, Community Certificate and 3 chest X-rays.

10. You will be removed from service without notice if any one of the certificates produced by you is a forged one of you were removed from service by this Corporation or other transport corporations".

It is not in dispute that similar orders have been passed in the case of appellants and the counsel for appellants has enclosed one set of such orders for reference. Among the several conditions, it is relevant to note that one condition is that on being made daily rated workmen, they were directed to pay Rs.4,550/- towards the share of medical and engineering colleges run by IRT. It is the definite case of the appellants that all the persons mentioned in those orders have paid the said amount. It is their further grievance that as per the settlement, the drivers should have been appointed on daily rated workmen from 18-04-2001 itself, instead of appointing them initially as trainee drivers on consolidated salary. However, they were brought on daily rated workmen during February/March, 2002. On completion of 240 duties, the drivers were issued orders dated 30-1-2003/29-3-2003 making them permanent and bringing them to scale of pay. However, the Transport Corporation cancelled the said orders dated 30-1-2003/29-3-2003 as well as the orders making them daily rated workmen during February/March, 2002 by issuing orders dated 3-4-2003 to all the 75 drivers. Based on the said order dated 3-4-2003 which was impugned in the writ petitions before the learned Single Judge, on completion of two years service the drivers were sought to be relieved. The learned Judge directed the appellants who were not in service and claimed a right under the alleged agreement under Section 12 (3) of the Industrial Disputes Act or under Tamil Nadu Conferment of Permanency Act, 1981 to approach the Labour Court or the competent authority. It is the stand of the Transport Corporation that some of the appellants have also approached the Labour Court and according to the appellants, this treatment of the learned Judge is discriminatory. It is also contended that the claim of the appellants that the order of cancellation of confirmation is illegal and therefore they should be given the same benefit like other employees who were not disturbed. Mr. N.R.

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Chandran, learned senior counsel appearing for the Transport Corporation, vehemently contended that the apprehension of the appellants is not correct. According to him, the order of confirmation is invalid because the confirmation has been made in a post which does not exist. By referring the decision of the Supreme Court in STATE OF PUNJAB v. JAGDIP SINGH-AIR 1964 SC page 521, he submitted that such a confirmation is no confirmation at all and it does not give any right to the incumbent. Further, he pointed out that the impugned order which was challenged before the learned Single Judge is not an order of termination and the appellants were reverted back as a trainee and they continued as trainees till the period of training was current. He also contended that the dispensation of service after the training period would not be a retrenchment and therefore it is not the termination. According to him, pursuant to a new settlement dated 1-9-2005, they were appointed on daily wages and on completion of two years they would be regularised. He also contended that since the prayer refers to violation of alleged settlement under Section 12 (3) of the Industrial Disputes Act and since the order of confirmation sought to be enforced is not valid in law and the appellants having invoked the remedy under the Industrial Disputes Act, the writ appeals are not maintainable and liable to be dismissed. We are unable to accept the said contentions for the following reasons.

10. We have already referred to the order dated 18-4-2001 appointing the appellants and other workmen as trainee drivers and the subsequent order dated 25-2-2002 appointing them as drivers on daily rated basis. The impugned order dated 3-4-2003 which was the subject matter before the learned Judge, specifically says that all the persons were sponsored by District Employment Exchange on the request of the Transport Corporation for appointment to the post of trainee drivers. Pursuant to the list of names sponsored by the District Employment Exchange, these persons were selected and appointed as trainee drivers on a consolidated pay for two years. Though the order dated 3-4-2003 did not contain a clause for termination of the services of the drivers, but allowed them to continue as trainee drivers, in view of the fact that the said order was passed without notice to the aggrieved persons or opportunity of being heard, the learned Single Judge has rightly arrived at a conclusion that the said order could not stand on ground of violation of principles of natural justice. Having arrived at such a conclusion, as said earlier, merely because some of them alone secured status-quo order and some could not, they cannot be deprived of the main relief namely, that the impugned order is liable to be quashed on the ground of violation of principles of natural justice.

11. The argument advanced by the learned senior counsel for the Transport Corporation that these appellants were trainees and trainees have no right to employment has no substance, since such argument is contrary to the conclusion of the learned Judge that the drivers would continue in the same capacity as in the same terms as before 30-1-2003 and, therefore, they were daily rated workmen before 30-1-2003, and thus

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they were not trainees. Further, as stated earlier, admittedly, the respondent-Transport Corporation did not challenge the common order of the learned Judge dated 13-5-2003; accordingly the said finding/decision became final. Apart from this, the status of daily rated workmen is in consonance with the 12 (3) settlement which has been heavily relied on by the learned Judge while granting limited relief (vide para 14).

12. With regard to the argument that the appellants are not entitled to the relief since they are pursuing their remedy in Labour Court/Industrial Tribunal, as rightly pointed out, except a vague statement, the respondent-Corporation has not furnished details in this regard. Even assuming that one or two appellants have approached the Labour Court to redress their grievance, which alone cannot be considered as a reason for denying relief to other appellants. In any event, as rightly pointed out, merely because some persons approached the Labour Court, that would not disentitle the others to get the relief, since the relief claimed is a limited one, and the prayer is to extend the relief to all the persons, who are similarly situated.

13. In summoning up finally, it is clear that all the workmen including the appellants were selected and appointed after calling their names from the District Employment Exchange. Though initially they were appointed as trainee drivers on a consolidated basis, subsequently they were appointed on daily rated basis. When they were sought to be relieved (according to the appellants), reverted as trainees (according to the Transport Corporation), it is not in dispute that they were not given notice or opportunity of being heard. When the learned Judge found that they were entitled notice or opportunity of being heard, we are of the view that the same is applicable to all the drivers, including the appellants herein. In such a circumstance, as rightly prayed, whatever the limited relief granted to others in para 14 of the order of the learned Judge is to be applied to the appellants also. Merely because they did not secure an order of status-quo at the time of filing of the writ petitions, the limited main relief cannot be denied to them and they cannot be discriminated. Accordingly, we hold that the directions issued in para 14 of the common order of the learned Single Judge dated 13-5-2003 shall also apply to the appellants. Even during the course of argument as well as in the written submission, Mr. D. Hariparanthaman, learned counsel appearing for the appellants, submitted that if the limited relief is given to the appellants in the Writ Appeals, no orders are necessary in the writ petitions, namely, W.P.Nos. 31378 to 31383/2005, 31430 to 31433/2005, 31499 to 31504/2005, 31534 to 31539/2005 and 33870 to 33876/2005. In the light of our discussion, all the Writ Appeals are liable to be allowed and consequently, the Writ Petitions are to be dismissed.

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Writ Petitions relating to Section 25-H of the Industrial Disputes Act

14. The petitioners in the batch of writ petitions seek a writ of mandamus to implement the orders in W.A.Nos. 1017 and 1019/97 etc., batch dated 8-12-97 by appointing them as drivers and taking on a preferential basis under Section 25-H of the Industrial Disputes Act. In order to appreciate the said claim, it will be useful to refer Section 25 -H of the Industrial Disputes Act:

> "25H. Re-employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

From the above provision, it is clear that the retrenched workmen should be given an opportunity to offer themselves for re-employment and once they offer themselves for re-employment, they shall have preference over other persons. By drawing our attention to the prayer in the Writ Petition, namely, to issue a writ of mandamus to appoint them by applying Section 25-H of the Industrial Disputes Act, Mr. N.R. Chandran, learned senior counsel appearing for the Transport Corporation, would submit that such prayer is not tenable. According to him, Section 25-H only contemplates a consideration of their offer and while considering the offer, preference should be shown to them over other persons.

15. Now let us consider the factual details of the case of both parties. According to the writ petitioners, they were earlier employed by the respondent-Transport Corporation as conductors or drivers. They were retrenched from service. They approached this Court earlier by filing writ petitions challenging their termination as illegal. Those petitions were disposed of on various dates by this Court, following the judgement in a batch of Writ Appeal Nos. 1294 to 1299, 1017 to 1019 of 1997 etc., batch dated 8-12-97 of the Division Bench of this Court directing the Transport Corporations to undertake an exercise to find out whether the workmen in those cases worked for more than 240 days or less than 240 days, and if the workmen worked for more than 240 days, there was a direction to reinstate them with back-wages and if they worked for less than 240 days, there was a direction to offer job in the future vacancies. Since the petitioners heavily relied on the direction of the Division Bench in Writ Appeal Nos. 1294/97 etc., batch dated 8-12-97, let us consider the said decision. The factual position shows the workers therein had been in continuous employment for more than 240 days with the Transport Corporation, and their services had been terminated without complying with the provisions of Section 25-F of the Act. The other category of the petitioners were the employees who had not completed 240

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days and their services had been dispensed with without complying with Sections 25-F and 25-H of the Act. It was argued before the Division Bench on behalf of the workmen that in the first category of persons the appellant Corporation could not dismiss them without complying with Section 25-F of the Act which was illegal and the Transport Corporation was liable to reinstate them. While accepting the said contention, the Division Bench has concluded "We find force in the contention of learned counsel for the respondent-workers. The appellant-Corporation is directed to undertake an exercise of deciding each individual case where a worker has completed 240 days and Section 25-F has not been complied with. The workers shall be reinstated with all the backwages and with all consequential benefits which the workers are entitled to. This exercise may be completed within two months from today". The Division Bench has further held that "Since the workers were taken in service, it is immaterial whether one was taken through the Employment Exchange or directly. Under the Industrial Law, which is a welfare legislation, a right has been conferred under the Act on worker to have a preference for the employment in case of fresh recruitment over the ones who have not earlier served the employer. Consequently, the appellant Corporation will offer the job to the retrenched employees complying with Section 25 H of the Act, irrespective of the fact whether the workers was employed through the Employment Exchange or directly, unless the Authority comes to the conclusion that the employment of the worker was provided mala fide or some ulterior consideration. This exercise may be completed within three months from today". They also held that "No adverse orders will be passed against the worker without giving opportunity of hearing". It is clear from the above direction it is the duty of the Transport Corporation to undertake an exercise to find out whether the workmen worked for more than 240 days or less than 240 days and if the workmen worked for more than 240 days, there was direction to reinstate them with backwages and if the workmen worked less than 240 days, there was a direction to offer job in the future vacancies. Based on the orders passed by this Court in the earlier writ petitions, the Transport Corporations issued orders assuring re-employment in future vacancies as these workmen worked for less than 240 days. It is true that after the termination of these workmen, there was no recruitment due to ban on recruitment imposed by the Tamil Nadu Government. The ban was removed by G.O.No.57, Transport Department, dated 21-7-2005 and it is the claim of the workmen that 2000 drivers post and 700 conductors post were identified as vacancies and now the recruitment process is going on. It is the argument of Mr. D. Hariparanthaman and Ms. D. Nagasaila appearing for workmen that before going for recruitment of new persons, the Transport Corporation ought to have re-employed the workmen, who were retrenched earlier in view of Section 25-H read with Section 25-J of the Act coupled with the judgement of the Division Bench dated 8-12-97 in Writ Appeal Nos.1294 of 97 etc., batch and other judgements/orders, which followed the earlier batch as well as the assurance given by the Transport Corporations based on those judgements. Since the Transport Corporations failed to provide re-employment, the workmen filed the present writ petitions praying for re-employment. Their

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claim for re-employment is based on the following three arguments:

i) Statutory right under Section 25-H of Industrial Disputes Act and 25-J of the said Act read with Rule 63 of Tamil Nadu Industrial Disputes Rules.

ii) The judgement of the Division Bench dated 8-12-97 in Writ Appeal Nos. 1294 to 1299/97 etc., batch and other judgements following the same.

iii) The assurance given by the respondents based on the earlier judgements.

16. The following legal issues arise for consideration:

i) What is the scope of the right guaranteed under Section 25 H of the Industrial Disputes Act, 1947? Are the workers entitled to a mere consideration for appointment along with fresh hands and a preference only when all other things being equal or do they have a preferential right of appointment? What is the relief that can be given under Section 25H of the Act?

ii) What is the scope of Section 25J of the Industrial Disputes Act? Is the Memorandum of Understanding (MOU) in derogation of Chapter V-A of the Industrial Disputes Act and if so, is it binding?

iii) Can the workers of Metropolitan Transport Corporation, Chennai (erstwhile Ambedkar Transport Corporation) be denied the benefit of the ratio of the decision of the Division Bench order dated 8-12-97 and the benefits of Section 25 H of the Industrial Disputes Act merely because they have entered into an MOU that their jobs will be guaranteed as and when their names are sponsored by the Employment Exchange as per their seniority of registration?

17. The Industrial Disputes Act, 1947 as enacted in 1947, was a piece of legislation mainly concerned with providing machinery for investigation and settlement of industrial disputes. The original enactment had no provisions for payment of compensation on lay off or retrenchment or provision for re-employment of retrenched workers. There was large scale lay off and retrenchment of workers and closure of industry resulting in great hardship to thousands of workers. It is in these circumstances that Chapter V-A of the Industrial Disputes Act, 1947 was introduced. We have already reproduced Section 25 H of the Act. Rule 63 of the Tamil Nadu Industrial Disputes Rules, 1958 (hereinafter referred to as "the Rules") prescribes the manner in which retrenched workers will be re-employed.

18. It is pertinent to point out that even before Section 25H was added to the Act industrial adjudication generally reocognized the

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principle that if any employer retrenched the services of an employee on the ground that the employee in question had become surplus, it was necessary that whenever the employer had occasion to employ another hand, the retrenched workmen should be given an opportunity to join service. This principle was regarded as of general application in industrial application on the ground that it was based on considerations of fair play and justice. (THE CAWNPORE TANNERY LTD., KANPUR v. S. GUHA-AIR 1967 SC 667, at 668 para 4). In that case, the relief of reinstatement given was upheld by the Supreme Court.

19. In WORMEN REPRESENTED BY AKHIL BHARATIYA KOYLA KAMGAR v. EMPLOYERS IN RELATION TO MANAGEMENT OF INDUSTRY COLLIERY OF BHARAT COKING COAL [2001 (4) SCC 55: 2001 (2) LLN 819 (SC) para 3, the Supreme Court held that there was a statutory obligation to re-employ the retrenched workman if the employer proposes to take new employees.

20. In MULLER AND PHIPPS (INDIA) PVT. LTD., v. THEIR EMPLOYEES [1967 (2) LLJ 222 at 225], the Punjab and Haryana High Court held that vacancy caused by retrenchment filled by promotion was held to be not valid as it defeats the provisions of Section 25 H and the statute could be easily circumvented by an employer who, for some ulterior motive, did not want to offer re-employment to a retrenched worker and the court upheld the order of deemed re-employment ordered by the Industrial Court.

21. In RAM CHANDRA YADAV v. RAJASTHAN STATE ROAD TRANSPORT [1990 (2) LLJ 408, para 6 and 12] a Division Bench of the Rajasthan High Court, when from among retrenched workers the juniors were re-employed overlooking the seniors the Court held that the seniors were entitled to wages for the period during which the juniors were re-employed.

22. In GUJARAT STATE MACHINE TOOLS CORPORATION LTD. V. DEEPAK J DESAI, [1994 (3) LLJ (Supp) 848] (Guj DB) and in ORIENTAL BANK OF COMMERCE v. UNION OF INDIA [1998 (2) LLJ 112 (All) (para 9] it was held that Section 25 H and the Rules do not create any distinction between temporary employment and permanent employment and the relief of reinstatement was given in both the cases.

23. The right under Section 25-H is "Substantial Right" as held by the Apex Court in KRISHNA DIST. C.M SOCIETY LTD., VIJAYAWADA v. N.V.P. RAO AND OTHERS [1987 (2) LLJ page 365 para 5]. Section 25-H does not admit any exception and will have over riding effect as held by the Kerala High Court relying on varying Apex Court rulings in 1982 (1) LLJ 248, para 6. Section 25-H uses "shall" that too at two places showing the mandatory character.

24. Rule 63 of Tamil Nadu Industrial Disputes Rules also uses the word "shall" and there is a mandate on the employer to offer re-employment to retrenched workmen and the retrenched workmen should respond within 10 days as per rule 63 (2) and if he fails to do so, he shall lose

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his claim for re-employment. Only thereafter, the employer can go for recruitment from outside after exhausting the retrenched workmen. Therefore, the word "preference" in Section 25-H has to be understood by reading it along with the Rule 63 (2) of Tamil Nadu Industrial Disputes Rules.

25. Mr. N.R. Chandran, learned senior counsel appearing for the Transport Corporation, would contend that Section 25-H of the Act is clear that the retrenched workmen should be given an opportunity to offer themselves for re-employment and once they offer themselves for re-employment, they shall have preference over other persons. While elaborating the same, he contended that Section 25-H only contemplates a consideration of their offer and while considering the offer, preference should be shown to them over other persons. He further contended that the petitioners' case is based on the observation of the Division Bench in Writ Appeal Nos. 1294 to 1299 and 1017 and 1019 of 1997 etc., batch and the passage relied on is:

> "Consequently, the appellant-Corporation will offer the job to the retrenched employees complying with Section 25-H of the Act, irrespective of the fact whether the worker was employed through the Employment Exchange or directly, unless the Authority comes to the conclusion that the employment to the worker was provided mala fide or for some ulterior consideration. This exercise may be completed within three months from today".

According to him, from the above observation, the Corporation is expected to comply with Section 25-H of the Act and the said observation does not clothe with any right to the employees to get an appointment automatically. According to the learned senior counsel, Section 25-H contemplates only a "preference". He very much relied on the judgement of the Supreme Court in SECRETARY, A.P. PUBLIC SERVICE COMMISSION v. Y.V.V.R. SRINIVASULU, reported in 2003 (5) SCC page 341, wherein Their Lordships have explained the term "preference". According to him, preference can be shown only when other things being equal. Hence the writ petitioners cannot demand employment. It is also his claim that the prayer in the writ petition demanding an employment is not valid. Further, Rule 62 of the Rules contemplates maintenance of seniority list of workmen retrenched and this should be prepared taking into account the seniority of service of the said workmen in the category concerned. He also pointed out that the Supreme Court has taken the view in CENTRAL BANK OF INDIA v. S. SATYAM, reported in (1996) 5 Supreme Court Cases 419 that an employee who was put in more than 240 days would have to be preferred over a workman who is put in less than 240 days and consideration of their claim under Section 25-H depends upon the vacancies available. Mr. N.R. Chandran also pointed out that if the petitioner insist that they should be appointed and seek to enforce their alleged claim under Section 25-H, then the writ petition is not maintainable in view of the other alternative remedy. He also pointed out that some of the petitioners have challenged the order of

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"termination" in the Labour Court under Industrial Disputes Act. At the same time, they have filed writ petitions claiming preference under Section 25-H. He relied on the judgement of the learned Single Judge in the case of S.B. EMPLOYEES' UNION v. S.B.I, reported in 2001-III-LLJ (Suppl) 639 wherein the learned judge has held that this would be impermissible and they cannot pursue their remedies in two different forums.

26. On going through the Division Bench decision dated 8-12-97, specific direction therein, the language used in Sections 25-H, 25-J of the Act and Rule 63 of the Rules as well as various orders passed by the learned Single Judges of this Court, following the Division Bench decision dated 8-12-97, we are unable to accept the argument projected by the learned Senior Counsel for the Transport Corporation. Section 25-J uses non-obstanti clause placing the right of re-employment provided under Section 25-H in Chapter V-A of the Act in higher pedestal. Further, Section 25-H uses, "any workmen" and workman is defined under Section 2 (s) of the Act and the said definition is wide and includes all category of workmen, such as permanent, temporary, casual, badli, etc. More over, Section 25-H uses "any person" and that therefore irrespective of the category for which vacancy arose, the right of re-employment is protected under Section 25-H.

27. We have already extracted the direction/observation of the Division Bench dated 8-12-97 and in view of the same, we are of the view that the respondents-Transport Corporations are bound to offer jobs to the petitioners. It is not in dispute that the Transport Corporations filed Special Leave Petition before the Supreme Court and the same was dismissed as withdrawn. It was also brought to our notice that later, they have filed Review and the Review was also dismissed. Though an argument was advanced that the judgement in Writ Appeal Nos. 1294 to 1299/97 etc., dated 8-12-97 was based on the concession given by the counsel for the Transport Corporation, it is brought to our notice that this argument was rejected by another Division Bench judgement in W.A.No. 2083/99 dated 26-10-99.

28. Mr. D. Hariparanthaman, learned counsel appearing for the workmen, has brought to our notice that the judgement of the Division Bench dated 8-12-97 in W.A.Nos. 1294 to 1299/97 etc., batch was followed in all the subsequent decisions. By order dated 22-04-98 in W.P.Nos. 4013 to 4015/98 etc., batch (V.S.J. SHANMUGAM v. TAMIL NADU STATE EXPRESS BUS TRANSPORT CORPORATION LTD., MADRAS-2), learned Single Judge (K. Govindarajan, J.,), following the Division Bench decision dated 8-12-97, issued similar directions as provided therein. In W.P.Nos. 12497 to 12509/98 etc., batch dated 4-9-98 (A.S. BALU AND OTHERS v. STATE EXPRESS TRANSPORT CORPORATION), K. Sampath, J., following the said Division Bench decision issued similar direction. The same learned judge in W.P.No. 18164/96 dated 18-12-98 (S. DEWVARAJU AND OTHERS v. TAMIL NADU STATE TRANSPORT CORPORATION, COIMBATORE DIVISION-II, ERODE) also issued similar

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directions. In W.P.Nos. 683 and 687/99 dated 22-01-99 (R. MURUGESAN v. T.S. THANGAVELU), S. Jagadeesan, J., following the Division Bench judgement, directed the Transport Corporation to consider their representation, as directed by the Division Bench. In W.P.No. 20246/98 etc., batch dated 15-3-99 (S. UMA MAHESWARI v. STATE EXPRESS TRANSPORT CORPORATION,TAMIL NADU DIVISION-2), P.D. Dinakaraj, J., following the Division Bench order dated 8-12-97, disposed of all the writ petitions on the conditions and terms provided in the Division Bench order. The very same Judge in Writ Petition No. 19113/98 etc., batch dated 15-03-99 (R. LAWRENCE v. SECRETARY, TRANSPORT DEPT., GOVERNMENT OF TAMIL NADU), following the Division Bench order, issued directions to the Transport Corporation. By subsequent order dated 29-04-99 in W.P.No. 7425 to 7431/99 (G. RAJENDRAN, v. T.N. STATE TRANSPORT CORPORATION), the very same learned Judge (P.D.D., J.,) disposed of all the writ petitions by following the above said Division Bench order. He also passed similar orders in W.P.Nos. 10162 to 10201/99 dated 17-6-99. In W.P.No. 1869/99 dated 11-2-2000 (G. MURUGESAN AND OTHERS v. MANAGING DIRECTOR, T.N.STATE TRANSPORT CORPORATION), E. Padmanabhan, J., following the Division Bench decision dated 8-12-97, directed the Transport Corporation to consider the claim of the petitioners therein in the light of the Division Bench pronouncement. In W.P.Nos. 11340/2000 etc., batch dated 07-07-2000 (ASHOK KUMAR and OTHERS v. T.N. STATE TRANSPORT CORPORATION, ERODE-2) one of us (P.Sathasivam, J.,), following the very same Division Bench order, directed the Transport Corporation to consider the representation made by the petitioners-workmen. In W.P.No.25233/2001 dated 21-12-2001 (PERIYASAMY v. T.N.STATE TRANSPORT CORPORAITON,ERODE-2), D. Murugesan, J., following the Division Bench order, directed the Transport Corporation to dispose of the representation as directed by the Division Bench. Finally, in a batch of Writ Petitions, namely, W.P.Nos. 16526 to 16536/2000 etc., dated 6-03-2003, K. Govindarajan, J., following the very same Division Bench order dated 8-12-97, after issuing similar directions therein, disposed of all the writ petitions. All the above orders find place in Volume I of the typed-set of papers filed by the petitioners.

29. Apart from the series of orders of this Court based on the earlier Division Bench order which became final, as rightly pointed out by the learned counsel for the petitioners, the Transport Corporations are bound by their own assurance given based on the Court orders, they are estopped from going back on their assurance.

30. We are satisfied that Section 25-H of the Industrial Disputes Act requires the management to give preference to retrenched workmen over others, where any workmen is retrenched and the management proposes to take into its employ any person again for work, where the retrenched workman offers himself for re-employment. This indeed is a substantial right. Section 25-J of the Act which is very material for our purpose provides that provisions of Chapter V-A of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment

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(Standing Orders) Act, 1946. A bare reading of Section 25-H makes it amply clear that it casts a statutory duty on the employer to give an opportunity to the retrenched workmen to offer themselves for re-employment whenever the employer intends to fill-up the vacancy. In terms of Section 25-H, the employer is bound to give an opportunity to the retrenched workmen to offer themselves for re-employment and if the retrenched workmen offer themselves for re-employment, the employer is bound to give preference to them over other persons. If this is not done and the appointments are given in violation of the provisions of Section 25-H, the retrenched workmen can raise the grievance.

31. We are of the firm view that the word "preference" in the context of Section 25-H very clearly means that the retrenched workers have a prior right of re-employment over other persons and hence are entitled to an order of re-employment. As rightly pointed out by Ms. D. Nagasaila, learned counsel appearing for some of the workmen, any other meaning would defeat the purpose of the provisions of Chapter V-A of the Act. LABHA RAM AND SONS v. STATE OF PUNJAB [1998 (5) SCC 207], was a case where the appellants were licensed dealers functioning from old market areas for over 50 years. Subsequently the Government created a new market complex and the dealers had to shift business there. All the dealers were anxious to get accommodation in the new market area but were told to stand in the queue along with the new comers and compete with them in the open auction. In this context the Supreme Court held that such an argument is specious. The Court held that the Government had an inherent obligation to provide all the licensed dealers sufficient accommodation for carrying on their trade and such an obligation does not stand discharged by merely allowing them to compete with the outsiders in the open auction. The Government was directed to give preference to the erstwhile dealers.

32. In T. PICHAI v. THE COLLECTOR OF TIRUNELVELI [1986 (2) MLJ 1, it was held that the preference would be as against somebody. In this case the Minor Mineral Concession Rules provided for preference for leases of quarries to be given repatriates from Sri Lanka and any Labour Co-operate Society. At page 7 of the judgment it was conceded that the procedure of auctioning of lease to other applicants would arise only if the allotment to the preferential category was not feasible. In this case, there was more than one applicant who was a Sri Lankan repatriate and in this context the Court directed that the Collector should invite the applications by notice in the district gazette. The ratio of this case supports the contention of the petitioner.

33. In ISLAMIC ACADEMIC OF EDUCATION v. STATE OF KARNATAKA (AIR 2003 SC 3724 at para 14 at page 3744), the Supreme Court has held that in the minority professional college the management can admit to the management quota a student of their own community/language in preference to a student of an another community even though that other student is more meritorious. This will clearly demonstrate that the word preference takes colour from the context.

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The above discussions of us and the materials placed, the factual details, the earlier Division Bench order dated 8-12-97 in Writ Appeal Nos. 1294/97 etc., batch, which became final, several orders of this Court following the said Division Bench decision and the statutory provisions particularly, Sections 25-H, 25-J of the Act and Rule 63 of the Rules, we are in agreement with the stand taken by the petitioners. Further, even according to the respondents, now the ban on recruitment has been lifted and they are at the process of recruiting more drivers and conductors. In such a circumstance, there cannot be any difficulty for them to accommodate all the retrenched workers. There shall be a direction to the respondents to provide re-employment to the petitioners subject to fulfilment of 240 duties in the respective Corporations and satisfying other conditions, if any, in accordance with Section 25-H of the Industrial Disputes Act, in preference to the new recruits.

34. We pass the following orders:

(i) Writ Appeals are allowed. The appellants are entitled similar orders/directions/observations as provided in para 14 of the order of the learned Single Judge dated 13-05-2003 in Writ Petition Nos. 11785 of 2003 etc., batch;

(ii) In view of the allowing of the Writ Appeals, the Writ Petitions, namely, Writ Petition Nos. 31378 to 31383, 31430 to 31433, 31499 to 31504, 31534 to 31539, 33870 to 33876 of 2005 are dismissed, as agreed to by Mr. D. Hariparanthaman;

(iii)(a) In other Writ Petitions direction is issued to the respondents-Transport Corporations to provide re-employment to the writ petitioners who completed 240 days in the respective Corporations and satisfied other conditions, if any, in accordance with Section 25-H of the Industrial Disputes Act in preference to new entrants.

(b) Those (writ petitioners) who worked less than 240 days shall also be given re-employment and their services will be regularised, only after completion of 240 days and subject to fulfilling other conditions, if any. Writ Petitions are allowede on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

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(iv) In view of the relief granted in favour of workmen, Writ Appeal SR No. 40538 of 2005 is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

R.B.

To

1. The General Manager,
Tamil Nadu State Transport Corporation,
Coimbatore Division II, Erode Region
Chennimalai Road, Erode.

2. The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Salai, Chennai-2

3. The General Manager (Administration)
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Salai, Chennai-2

4. The Managing Director,
Tamil Nadu State Transport Corporation,
(Salem Division I) Ltd., Salem.

5. The Secretary to Government of Tamilnadu,
Transport and Highways Department,
Fort.St.George, Chennai-9.

6. The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Division III, Madurai

7. The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Madurai Division III,
Nagercoil, Kanyakumari District.

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8. The Special Commissioner
Employment & Training
Department of Employment & Training,
Chepauk, Chennai - 5.

9. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
37, Mettupalayam Road,
Coimbatore.

10.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Chennimalai Road, Erode.

11. The General Secretary,
Dr.Ambedkar Transport Corporation,
Tark Force Union,
23, Jeeva Street, Koundapalayam,
Phuzhal, Chennai-66.

1 cc To Mr.D.Hariparanthaman, Advocate SR.48521.
1 cc To Mr.V.R.Kamalanathan, Advocate SR.48301.
2 ccs To Mr.S.Mani, Advocate SR.48225.
5 ccs To Mr.L.G.Sahadevan, Advocate SR.48278.
2 ccs To Mrs.Sudha Ramalingam, Advocate SR.48292 & 48291
10 ccs To Mr.R.Ganesan, Advocate SR.48267, 48370, 48369, 48368, 48367, 48366, 48365, 48364, 48363, 48362,

Common Judgment
in Writ Appeal Nos.
2985 of 2003 etc.,Batch.
Dt:-08-12-2005.

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gp,kk,nm,sr,bg,rvr,rvl/20.12.

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